PT 03-31
Tax Type: Property Tax
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

QUAD CITY ROWING ASSOCIATION APPLICANT	**No.**	**02-PT-0023 (01-81-0053)**
v.	**P.I.N:**	**MO-2446 (Part of) (See attached legal description)**
ILLINOIS DEPARTMENT OF REVENUE		

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Richard A. Davidson of Lane & Waterman, on behalf of the Quad City Rowing Association (the "applicant" or the "Association"); Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the "Department").

SYNOPSIS: This matter raises the following issues: (1) whether the applicant has standing to bring a complaint seeking to exempt real estate situated on part of Rock Island County Parcel Index Number MO2446 and identified by the attached legal description (the "subject property") from 2001 real estate taxes under 35 **ILCS** 200/15-65; and, (2) whether the subject property was leased or otherwise used with a view to profit, in violation of 35 **ILCS** 200/15-65, during the 2001 assessment year, and, (3) if said property was not so leased, then whether the subject property was "actually and exclusively used for charitable purposes," as required by 35 **ILCS** 200/15-65, during the 2001 assessment year.

The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Rock Island County Board of Review (the "Board") on March 14, 2001. Dept. Ex. No. 2. This application named the Association as the sole applicant in this matter. *Id*.

The Board reviewed the Association's application and recommended to the Department that the requested exemption be denied. *Id*. The Department then issued its initial determination in this matter on February 22, 2002, which found as follows:

> APPLICANT IS NOT THE OWNER OF THE PROPERTY. APPLICANT IS NOT ASSESSED ON THE PROPERTY. APPLICANT IS LESSEE OF THE PROPERTY. NO LEASEHOLD ASSESSMENT HAS BEEN MADE FOR THE ASSESSMENT YEAR FOR WHICH APPLICATION HAS BEEN MADE.

Dept. Ex. No. 3.

Applicant filed an appeal to this denial and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department's initial determination be modified with respect to the issue of standing but otherwise affirmed.

FINDINGS OF FACT:

A. PRELIMINARY MATTERS AND HISTORICAL BACKGROUND

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Ex. Nos. 1, 2.
2. The Department's position in this matter is, in substance, that the applicant, the Association, lacks standing to bring the present exemption complaint. Dept. Ex. No. 1.

3. The subject property is located in Moline, IL and improved with a 10,746 square foot boathouse that contains various facilities used in connection with the sport of rowing. Dept. Ex. No. 2.

B. APPLICANT'S PROPERTY INTEREST IN THE SUBJECT PROPERTY

4. Applicant leases the subject property from the City of Moline (the "City") pursuant to the terms of a "Lease Agreement" dated July 6, 1998. Joint Group Ex. No. 1, Doc. F.

5. This "Lease Agreement" contains the following relevant terms and conditions:

   A. The term of the "Lease Agreement" shall run for a period of twenty years from July 6, 1998 "so long as the leased premises are used for recreational purposes[;]"

   B. Applicant shall pay the City annual rental of $1.00 per year throughout the lease term;

   C. Applicant "pledges and promises to use said premises for public recreational purposes only forms part of the consideration hereof. Further, [applicant] promises to use said premises for recreational purposes only shall be a continuing condition precedent and subsequent for continuation of this lease. If [applicant] shall, at any time, fail to use said premises for public recreational purposes, then this Lease shall terminate and all rights hereunder in [applicant] shall be extinguished[;]"

   D. "The general use of the premises shall consist of the design, construction, utilization, operation and maintenance of a rowing facility," which may consist of a building containing

storage rooms, locker rooms, meeting rooms, offices, concession areas, exterior landscaping, gardens, patios, decks and one or more boat docks;

E. All improvements and construction shall be done at no cost or expense to the City. However, the City's Planning and Development Department must approve the design of all such improvements;

F. Applicant shall obtain any permits required for construction, maintenance, or operation of the facility at its own expense;

G. Applicant must complete construction of the rowing facility within 30 months after the start of the lease term, unless such construction is delayed due to circumstances beyond applicant's control;

H. "If any one or more of the following conditions subsequently occurs, the leased premises shall revert to and revest [sic] in the City immediately upon occurrence and this lease shall be automatically terminated and null and void upon notice to and demand upon [the applicant], which agrees to deliver full enjoyment of the property back to the City; such premises shall be in the leased premises' original vacant condition, including however, any and all improvements constructed thereon:"

1. Applicant's failure to complete construction within the prescribed 30 month period, unless such construction is delayed by circumstances beyond applicant's control;
2. Applicant's neglect or abandonment of the rowing facility for a period of three months;
3. Applicant's attempted sublease or diversion of the premises from use of the site as a rowing facility[;]
4. Applicant's failure to comply with the terms and conditions of this lease in any manner or respect within 10 days after having received written notice of its non-compliance from the City;

I. Applicant shall keep the entire premises in "first class" order and condition throughout the lease term, and also, shall perform all necessary maintenance at no cost to, and to the sole satisfaction of, the City;

J. Applicant is responsible for, and shall promptly pay, all real estate taxes levied against the premises;

K. Applicant shall indemnify, save and hold harmless the City against and from any and all loss, cost damage or other expenses arising out of any accident or other occurrence that takes place on or about the leased premises and which is attributable to any act of willful misconduct or negligence of applicant or its agents. Applicant shall also:

1. Indemnify and otherwise hold harmless the City against and from any and all causes of action or claims resulting from applicant defaulting on any of its obligations under the "Lease Agreement[;]"
2. Purchase on the commencement of construction activities, and maintain throughout the lease term, an actual landlord and tenant's Insurance Policy naming the City as additional insured.

L. Applicant "shall not assign to anyone, other than its subordinate corporations or subsidiaries, this lease in whole or in part nor sublet all or any part of the leased premises without the prior written consent of the City, which shall not be unreasonably withheld. The consent by the City to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. Notwithstanding any assignment or sublease, [applicant] shall remain fully liable for this lease and shall not be released from performing any of the terms, covenants and conditions of this lease[;]"

M. "Any holding over after the expiration of the lease term without the consent of the City shall be construed as a tenancy from month to month and shall be on the terms and conditions herein specified, so far as applicable[;]"

N. "All rights and liabilities herein given to or imposed upon the respective parties hereto shall extend to and bind the several respective successors and assigns of the said parties. No rights, however, shall inure to the benefit of any assignee of [the applicant] unless the assignment to such assignee has been approved by the City in writing[;]"

O. The City shall have the right of access over and across roadways on the premises;

P. All rights and remedies provided to the City under the terms of this "Lease Agreement" shall be cumulative, and also, shall be in addition to any other rights or remedies provided to the City by law. Furthermore:

1. This "Lease Agreement" and all of the rights that applicant enjoys under its provisions shall, at the City's option, cease and terminate upon the applicant's being adjudicated as bankrupt or insolvent by a court of competent jurisdiction, or, the applicant's making an assignment for the benefit of creditors;

2. The parties expressly understand that any such adjudication or assignment shall constitute a breach of the "Lease Agreement" for which the City shall be entitled to recover damages in an amount equal to the amount of rent reserved in this "Lease Agreement" for the duration of its term less

the fair rental value of the premises for the residue of said term;

3. If applicant should: (a) fall behind in paying, or fail to pay, all or any part of the rentals reserved under this "Lease Agreement;" or, (b) default on any of the other terms and conditions contained therein, and, if applicant should permit such delinquency or default to continue for a period of 10 days after the date that the applicant receives written notice of such default or delinquency from the City, then it shall be lawful for the City to either sue the applicant for any overdue rent or damages attributable to such default, or, at the City's election, declare the lease term ended and renter the entire premises, or any part thereof, for purposes of expelling, removing or otherwise regaining possession of such premises or any part thereof from applicant or any other person or persons occupying the property;
4. In the event that either: (a) the City should elect to repossess the property, or any part thereof; or, (b) the lease term should become terminated for any other reason, then the applicant expressly agrees that it will immediately surrender and deliver up possession of the leased property to the City peaceably and without further incident; and,

5. If the applicant should remain in possession of the leased premises after the occurrence of any event that terminates the "Lease Agreement," then the applicant "shall be deemed guilty of a forcible detainer of said premises under the statute, and shall be subject to all of the conditions above named, and to eviction and removal as above stated."

Q. The City expressly reserves a lien in its favor upon applicant's interest in the leased property, which lien is "prior to and preferable to any and all liens thereupon whatsoever," for any rents and/or damages that the applicant is obligated to pay under terms of the "Lease Agreement[;]"

R. Upon termination of the lease term and any renewals thereof, "all improvements located upon the leased premises shall become the property of the City, unless the City notifies [the Applicant] within thirty [30] days after termination to remove same from the premises[;]"

S. The City retains the right to inspect the property upon giving 48 hours written notice to the applicant, provided that the City performs any such inspection between the hours of 8:00 a.m. and 8:00 p.m. In addition:

1. The City shall retain one key to all of the buildings situated on the leased property and may use such key in making any of the inspections referenced above;

2. Applicant may change or substitute for any buildings situated on the leased premises. However, any such change of lock shall include a key, that is to be made at the applicant's expense, that the applicant is to deliver to the City within two working days of the change.

Joint Group Ex. No. 1, Doc. F.

6. Pursuant to authority contained in the "Lease Agreement," the applicant obtained a construction mortgage from First Midwest Bank (the "Bank") on May 17, 2000. Joint Group Ex. No. 1, Doc. K.

7. The mortgage provides, in substance, that applicant pledges its leasehold interest in the subject property as security for a certain promissory note or credit agreement, also dated May 17, 2000, in the "original principal amount of $200,000.00," plus interest at an initial rate of 9.00% *per annum*. *Id*.

8. The title report attached to the mortgage document states, *inter alia*, that: (a) ownership of the subject property is vested in the "City of Moline by virtue of a Warranty Deed from Schadler River Excursionsions dated 9-13-89 and filed for record 9-22-89 as Document No. 89-15465 in the Office of the Recorder of Rock Island County, Illinois[;] and, (b) that taxes are exempt for this parcel." Joint Group Ex. No. 1, Doc. K.

9. The subject property ostensibly remained exempt from real estate taxation until October 22, 2001, when the Moline Township Assessor, acting pursuant to Section 9-

180 of the Property Tax Code,[1] issued an adjusted assessment of new construction against the subject property. Dept. Ex. No. 3.

10. This adjusted assessment indicated that:

A. New or added construction on the subject property was substantially completed, and applicant's initial occupancy or use thereof commenced on June 28, 2001; and,

B. As a result of such new or added construction, the current assessment should be corrected to reflect a total assessment of $112,353.00 as of June 28, 2001; and,

C. This adjustment assessment was on both the land and the improvement, with $9,018.00 being for the land and $103,335.00 being for the improvement; and,

D. The applicant Association was the sole assessee of record for both components of this adjusted assessment.

Id.

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1. Section 9-180 of the Property Tax Code states, 35 **ILCS** 200/9-180, in relevant part, as follows:

200/9-180. Pro-rata valuations; improvements or removal of improvements

§ 9-180. Pro-rata valuations; improvements or removal of improvements. The owner of property on January 1 shall also be liable, on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings, structures or other improvements on the property from the date when the property was substantially completed or initially occupied or initially occupied or initially used to December 31 of that year. The owner of the improved property shall notify the assessor, within 30 days of completion of the improvements, on a form prescribed by that official, and request that the property be reassessed. The notice shall be sent by certified mail, return receipt requested, and shall include the legal description.

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Computations under this Section shall be on the basis of a year of 365 days.

35 **ILCS** 200/9-180.

C. APPLICANT'S ORGANIZATIONAL AND FINANCIAL STRUCTURES

11. Applicant is an Illinois not-for profit corporation that is also exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. Joint Group Ex. No. 1, Docs. A, B, C, G.

12. Applicant's Articles of Incorporation and by-laws indicate, in general terms, that applicant is organized for the object and purpose of operating exclusively "for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended," and exercising all powers and privileges conferred on it by the General Not For Profit Corporation Act, 805 **ILCS** 105/101.01, *et seq*., not inconsistent therewith. Joint Group Ex. No. 1.

13. Applicant's by-laws contain the following provisions relative to its membership structure:

    A. Membership is open to any individual or family/household interested in participating and/or promoting the sport of rowing;

    B. All members shall be entitled to attend and participate in the Association's meetings or activities;

    C. Any person, family or household that wishes to become a member of the Association must first submit an application for membership and a waiver and release of liability agreement to applicant's governing board;

    D. The right of membership shall be "contingent" upon payment of such fees and dues, and also, submission of such application, release and waiver forms as applicant's governing board may prescribe. However, such membership dues and

other fees for use of the Association's equipment "shall be waived or reduced for individuals who show an inability to pay[;]"

E. Applicant's governing board maintains the right to terminate or restrict the privileges of any member for failure to comply with the rules and regulations that it adopts.

Joint Group Ex. No. 1, Doc. C.

14. Applicant's mission statement indicates, *verbatim*, that:

> The mission of the Quad City Rowing Association is to promote the sport of **ROWING**; to serve its members and the community through related educational and competitive activities, leadership and coaching, equipment and facilities which help member athletes develop and improve their skills; to help members get local, regional, recreational and international recognition; and to provide events to promote community awareness and exploration of this sporting option, as well as spectator enjoyment of this sport.
>
> Membership is not limited by age, race, religion, gender or other cultural, social or economic factors. Our only requirement is that all members know how to swim.

Joint Group Ex. No. 1, Doc. H.

15. The mission statement also the following *verbatim* description of applicant's services:

A. Offer opportunities for sweep rowing or sculling to all club members;

B. Offer recreational or competitive programs for our rowers.

C. Offer classes for juniors, open, college students and masters.[2]

D. We hope to offer Learn to Row programs for Disadvantaged youth and Adaptable Rowing for Disabled Individuals. This year we did a Learn to Row program with the Davenport Central High School Outdoor P.E. classes. Forty-five students learn [sic] to row in this daily class which ran for two weeks.

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2. These programs will be explained more fully in Findings of Fact 16-17, *infra.*

E. Offer a local regatta to promote the sport of rowing in the community.

F. Offer opportunities for our rowers to compete at the local, regional, national and international regattas.

G. Offer opportunities for our college students to coach club members and run our Learn to Row Program.

H. Offer college recruiting information to young rowers interest in rowing in college.

Id.

16. Applicant's learn to row program is an introductory program, open to adults and high school students, who wish to learn the basics of rowing. *Id*.

17. Most of the Association's other programs are targeted at specific age groups, with: (a) its Junior program being designed for high school youth; (b) its Open program being for college-age students; and, (c) its Masters' program being for adults 27 years and older. *Id*.

18. Applicant's unaudited operating budget for the 2001 assessment year was as follows:

SOURCE	**Amount**	**% of Total**[3]
INCOME		
Junior Memberships	$ 6,150.00	30%
Master Memberships	$ 4,505.00	22%
Boat Storage	$ 1,200.00	6%
Youth Learn to Row Program	$ 1,400.00	7%

3. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses shown on the relevant line of the second column. Thus, $6,150.00/$20,208.56 =.0.3043 (rounded four places past the decimal) or 30%.

Adult Learn to Row Program	$ 4,320.00	21%
T-shirt Sales	$ 159.00	1%
Club Lesson	$ 30.00	<1%
Augustana Boat Storage	$ 1,202.00	6%
Equipment Donation (Unspecified)	$ 881.42	4%
SOURCE	**Amount**	**% of Total**
Augustana Dues	$ 0.00	0%
Regattas	$ 0.00	0%
Garage Sale	$ 321.14	2%
Chilli Lunch Donation	$ 40.00	0%
TOTAL	**$ 20,208.56**	100%
EXPENSES		
Supplies	$ 843.59	5%
Boat Loan Payments	$ 3,142.10	18%
Organizational Dues	$ 275.00	2%
Insurance	$ 5,542.44	32%
Gas	$ 332.93	2%
Utilities	$ 716.01	4%
State and Federal Fees	$ 54.00	0%
Boathouse Water	$ 153.96	1%

TV/VCR	$ 304.86	2%
Fireproof Gas Cabinet	$ 415.00	2%
Coaches Wages	$ 2,910.00	17%
Boat Transportation	$ 40.00	`0%
Boat Repairs	$ 1,275.00	7%
P.O. Box	$ 150.00	1%
Transfer of Funds to Capital Account	$ 1,000.00	6%
Miscellaneous	$ -	0%
Regatta Expense	$ -	0%
TOTAL	**$ 17,154.89**[4]	**100%**

Joint Group Ex. No. 1, Doc. D.

19. Applicant's membership dues for the 2001 assessment year were $150.00 for junior members and $200.00 for adult master rowers. Tr. p. 54.

4. The figure of $17,154.89 that appears in this column is $3,029.29 less than the figure of $20,184.18 that appears on Joint Group Ex. No. 1, Doc. D. The significance of this discrepancy, and other matters related to applicant's financial structure, shall be discussed *infra* at pp. 25-27.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, wherein all property owned by "institutions of public charity" is exempted from real estate taxation, provided that such property is "actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit." 35 **ILCS** 200/15-65(a); Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, any and all doubts that arise in an exemption proceeding, whether they are attributable to evidentiary deficiencies, debatable factual interpretations or questions of statutory construction, must be resolved in favor of taxation. *Id*.

A. THREASHOLD ISSUES

Before addressing any substantive issues, I note that the Department's initial determination in this matter reflects concern that applicant lacks the "direct and substantial" financial interest in the outcome of this controversy that is necessary to provide it with standing herein. Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991). The Department ostensibly made this determination before it was advised that the Moline Township Assessor had issued an adjusted assessment of new construction against the subject property pursuant to 35 **ILCS** 200/9-180.

The Assessor listed the applicant as the sole assessee of record for both the land and improvement components of this adjusted assessment, which the Assessor made effective as of June 28, 2001. This date is, therefore, the one on which the applicant became liable for any real estate taxes levied against the subject property, which it must pay under terms of its lease with the City. Accordingly, applicant does indeed have the requisite "direct and substantial" financial interest in the outcome of this case necessary to contest those real estate taxes that were levied against the subject property between June 28, 2001, and the last date of the 2001 assessment year, December 31, 2001.

This standing enables me to reach the merits of the Association's exemption complaint for the 51% of the 2001 assessment year that transpired between June 28, 2001 and December 31, 2001. It does not, however, *ipso facto*, relieve applicant of its burden of proving all the substantive elements necessary to sustain its exemption claim. For the following reasons, I conclude that applicant has not sustained that burden.

B. SUBSTANTIVE ISSUES

The sole provision under which this applicant currently seeks exemption is Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a). An entity seeking to exempt real estate under Section 15-65(a) must prove that the property in question is: (1) "owned" by a duly qualified "institution of public charity;" and, (2) actually and exclusively used for "charitable purposes;" and, (3) not leased or otherwise used with a view to profit. 35 **ILCS** 200/15-65(a); Methodist Old People's Home v. Korzen, *supra*. After carefully reviewing the record, I conclude that applicant has not sustained its burden of proof as to any of these elements.

1. LACK OF EXEMPT OWNERSHIP

a. Applicant Does Not Qualify as the "Owner" of the Subject Property

Applicant alleges that it satisfies the exempt ownership requirement with respect to the boathouse improvement because it qualifies as the "owner" of that improvement, while the City of Moline qualifies as the "owner" of the underlying ground. *See*, Joint Group Ex. No. 1, Doc. K. However, the evidence of record fails to support this allegation for several reasons.

First, the lease, which is the primary document that governs whatever interest applicant holds in the subject property, is completely devoid of any language that awards applicant ownership of the building improvement at any time during the lease term. Nor does the lease contain any provision that awards applicant such ownership rights at the conclusion of this term. Rather, the lease expressly states, in no uncertain terms, that "[u]pon termination of the term hereof and any renewal hereof, *all improvements located upon the leased premises shall become the property of the City*, unless the City notifies

[the applicant] within thirty (30) days after termination to remove same from the premises." (emphasis added) Joint Group Ex. No. 1, Doc. C. Given this language, and the total absence of any provision that conveys ownership of the improvement to the Association at any time during the lease term or otherwise, I fail to see how the lease provides applicant with any ownership interest in that improvement.

Moreover, the record does not contain any other type of instrument that conveys ownership of the building improvement from its titled owner, the City, to the applicant. Nor does the title report that is attached to the mortgage mention the existence of any such instrument. *See* Joint Group Ex. No. 1, Doc. K. Accordingly, the mere statement that is contained in a cover letter from a Bank vice-president to applicant's president,[5] indicating that applicant owns the building improvement, amounts to a mere unproven assertion.

This and all other failures of proof must be construed against the applicant, which is charged with the burden of proof as to all elements of its exemption claim. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Even if this were not the case, neither the lease nor any other documents of record vests applicant with rights of possession and enjoyment necessary to qualify it as the legal "owner" of any part of the subject property. Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062, 1069 (5th District, 1981); People v. Chicago Title and Trust, 75 Ill.2d 479 (1979); Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996).

5. This letter was attached to the mortgage and accompanying title report admitted as part of Joint Group Ex. No. 1, Doc. K.

For instance, the lease terms expressly state that applicant cannot sublet, assign, encumber or otherwise alienate its interest in the subject property without first obtaining written consent from its lessor, the City. Consequently, applicant is not truly at liberty to alienate its interest in that property in a full and free manner that is demonstrative of "ownership." Wheaton College v. Department of Revenue, 155 Ill. App.3d 945, 947-948 (2nd Dist. 1987).

In Wheaton College, *supra*, the court held that the appellant, College, did not qualify as the "owner" for property tax purposes under terms of a 30 year lease which provided, *inter alia*, that the College enjoyed certain incidents of ownership, including the right to remove existing structures from the property and the right to sublease it. Wheaton College, *supra* at 948. The College did not, however, enjoy the right to freely alienate the property. *Id*.

If a lessee that enjoys full subleasing and removal rights does not qualify as an "owner" for property tax purposes because it is not at liberty to fully alienate the property, then I cannot conclude that this applicant-lessee, which enjoys practically no encumbrance or alienation rights, can qualify as such an "owner." However, even if this were not true, the lease provisions that vest the City with a lien on applicant's interest in the subject property render it all but factually impossible for applicant to alienate that interest in any manner that is indicative of "ownership."

More importantly, the remaining lease provisions are no different in substance than those contained in most standard commercial leases. For instance, although the lease calls for applicant to pay what initially appears to be the nominal sum of $1.00 as rental for the premises, it also requires applicant to pay all maintenance costs and utility

charges at its own expense. Thus, the overall economic rental scheme created by the lease is no different than that of a conventional commercial lease in that it contemplates that the lessee, and not the lessor, will bear all the operating costs for the leased property.

The lease also specifically states that even though applicant is to assume all of the construction costs for the improvement, that improvement, as well as the entire subject property, will become property of the City at the conclusion of the lease term. Thus, applicant, like any other commercial tenant, must surrender possession when the lease term ends.

The lease also provides the City with the rights, conventionally vested in commercial landlords, to inspect and maintain access to the subject property throughout the lease term. It further vests the City with rights to: (1) evict applicant from the premises in the event that applicant defaults on any of its obligations under the lease; and, (2) cure any such default through appropriate repossession measures, with which applicant cannot interfere. Therefore, for all the above reasons, I conclude that the City is both *de facto* and *de jure* "owner" of the subject property and any improvements situated thereon.

This conclusion has several important implications for the outcome of this case. First, because applicant's status as an Illinois not-for-profit corporate vests it with a legal identity that is separate and distinct from that of the City, applicant cannot seek to raise any exemption claims that are properly brought by the City. Furthermore, because the City is not the applicant in this case, this case cannot be adjudicated under the exemption provisions that pertain to cities.

Those provisions are found in Section 15-60(b) and (c) of the Property Tax Code, which state, in relevant part, that the following are to be exempt from real estate taxation: (1) "all public buildings belonging to any county, township, or city, or incorporated town, with the ground on which the buildings are erected" (35 **ILCS** 200/15-60(b)); and, (2) "all property owned by any city or village located within its incorporated limits." (35 **ILCS** 200/15-60(c)).

Section 15-35(c) further provides, in substance, that the city or village's fee interest in any property that it leases shall remain exempt even though the lessee's interest in that property shall be subject to assessment under Section 9-195 of the Property Tax Code.[6] The revised assessment for new construction, which the Moline Township Assessor issued against applicant's interest in the subject property is, in effect, a leasehold assessment.

The applicant, Association's, interest in the subject property is the only one that is subject to this assessment. Therefore, the only way for the applicant to obtain an exemption from the taxes levied against that interest is for the applicant to prove that the Section 15-65(a) exemption, which pertains to "institutions of public charity," applies herein. For the following reasons, I conclude it does not.

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6. Section 9-195 of the Property Tax Code, 35 **ILCS** 200/9-195, governs the imposition of leasehold assessments and states as follows:

> Except as provided in Section 15-55 [which governs exemption of property owned by the State of Illinois], when property which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as property that is not exempt, and the lessee shall be liable for those taxes.

b. Applicant Does Not Qualify as an "Institution of Public Charity"

By definition, an "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)); or, (2) operates primarily in the public interest and lessens the State's burden. (DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*); Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

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35 **ILCS** 200/9-195. *See also*, Metropolitan Water Reclamation District of Greater

The first step in determining whether applicant qualifies as an "institution of public charity" is to examine the language of its organizational documents. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Applicant's organizational documents, inclusive of its Articles of Incorporation and by-laws, state, *inter alia*, that it is organized for "charitable" purposes consistent with Section 501(c)(3) of the Internal Revenue Code. However, mere "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." *Id*. Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id*.

This is especially true where, as here, the wording of applicant's mission statement strongly suggests that applicant operates primarily for the benefit of its dues paying members. For instance, the mission statement makes explicit reference to the fact that applicant's services are designed to "help *member* athletes develop and improve their skills … [and to] help *members* get local, regional, recreational and international recognition …[.]" (emphasis added) Joint Group Ex. No. 1, Doc. H.

The mission statement further asserts, in no uncertain terms, that applicant's services include programs that offer: (1) "opportunities for sweep rowing or sculling *to all club members*[;]" (2) "recreational or competitive programs for *our* rowers[;]" and, (3) opportunities for *our* rowers to compete at the local, regional, national and international regattas." *Id*.

Chicago v. Department of Revenue, 313 Ill. App.3d 469 (1st Dist., May 1, 2000).

Such services are, in substance, no different from those offered by any other commercial athletic club, which, by its very nature, operates to serve the common athletic interests of its dues paying membership. Thus, at the very least, the description of the services and other quoted statements that appear in applicant's mission statement are patently inconsistent with the "charitable" motives espoused in applicant's organizational documents.

This discrepancy, standing alone, constitutes legally sufficient grounds for denying the Association "charitable" status because all inconsistencies or other evidentiary deficiencies that arise in property tax cases must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). However, the record also contains numerous other evidentiary deficiencies that prevent me from concluding that the applicant qualifies as an "institution of public charity."

The most acute deficiency is in the evidence relating to applicant's financial structure. The "operating budget" that applicant submitted as Joint Group Ex. No. 1, Doc. D was not audited. Consequently, I cannot give this budget the same evidentiary weight as I would an audited financial statement. Even if I could, my analysis of that budget reveals a significant discrepancy in applicant's operating expenses.

The operating budget document (Joint Group Ex. No. 1, Doc. D) reports, on its face, that applicant's total operating expenses for the 2001 assessment year were $20,184.18. However, my computation of the actual expense items reported on that document reveals that the correct total sum of such expenses is equal to $17,154.89, (*see*

Finding of Fact 18), which produces a discrepancy of $3,029.29 in total expenses that was not explained in the record.

This unexplained discrepancy raises doubts as to the overall reliability of applicant's evidence relative to its financial structure. Once again, the evidentiary deficiencies associated with such doubts must be resolved in favor of taxation and against the applicant. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. Therefore, at minimum, applicant's operating budget fails to credibly support its claim to "charitable" status.

Even if I could disregard this credibility issue and take the operating budget at face value, the information contained therein raises at least one inference suggesting that applicant does not operate primarily in the public interest. 52% of the total revenues reported on the Association's operating budget come from membership fees, while another 28% of such revenues come from fees that applicant charges for its Learn to Row programs.

These sources account for 80% of the total revenues shown on applicant's operating budget. Furthermore, applicant's operating budget does not contain any line item for contributions, grants or other publicly oriented sources of revenue. The Association's president, Rebecca Eiting, testified that applicant did receive some grants to help defray the nearly $700,000.00 in costs that it incurred for construction of the boathouse improvement. Tr. pp. 32-36. Although the Association submitted documentary evidence establishing the identity of entities that donated these grants and their amounts, (Applicant Ex. No. 2), Ms. Eiting specifically testified that none of these grants were

reflected on applicant's operating budget because applicant did not use them to fund its operating expenses. Tr. pp. 114 - 117.

This omission may serve legitimate business or accounting purposes. However, it leaves me unable to accurately evaluate the role that contributions play in applicant's overall financial structure. More importantly, the document that would probably provide me with the most accurate information relative to the Association's overall financial structure, its federal tax return, was not introduced as substantive evidence because it was shown to Ms. Eiting for the limited purpose of refreshing her recollection as to the total amount of contributions received. Tr. pp. 110-112. In the absence of this federal return, and because applicant's operating budget constitutes neither a credible nor a reliable source of information as to the Association's overall financial structure, the totality of the evidence presented with respect to that structure does not rise to the level of clear and convincing evidence that is necessary to sustain applicant's burden of proof.

The remaining evidence of record does not contain any information that would cure this failure of proof. For instance, the annual report submitted as Applicant Ex. No. 3 indicates, in relevant part, that applicant did the following during 2001: (1) paid the dues and uniform costs so that two boys could attend the U.S. Rowing Club National Competition; (2) covered an unspecified "portion" of the cost for one high school student to attend the U.S. Rowing "Selection Camp;"[7] (3) covered another unspecified "portion" of the fee that enabled one boy to attend the Royal Henley Regatta in England; and, (4) paid the cost of providing private lessons for one boy.

7. A "selection camp" is a one where the participants must be recommended or "selected" by rowing coaches throughout the United States. Tr. p.102.

The first three of these payments do not qualify as "charitable" acts for several reasons. First, the record does not disclose if the persons who received these payments were paid members of the Association. Without this information, I am unable to discern whether or not such payments were part and parcel of the benefits that applicant confers on its paid membership. However, even if I do not consider these payments to be membership benefits, it is clear that applicant awarded them only to the relatively select few persons whose outstanding athletic achievements enabled them to compete at advanced levels. Therefore, these payments are no different in substance from the stipends or subsidies that commercial athletic clubs provide to their members who participate in such advanced competitions.

Furthermore, the Association's operating budget does not disclose the amount of any expenses that applicant incurred by awarding these stipends. Ms. Eiting testified that her "best estimation" of these expenses was: (1) $300.00 for each of the two stipends awarded to the two boys who attended the U.S. Rowing Club National Competition; (2) $500.00 for the stipend awarded to the high school student who attended the Selection Camp; and, (3) between $500.00 and $800.00 for the stipend awarded to the boy who attended the Royal Henley regatta. Tr. pp. 102-103.

The uncertain nature of estimates renders them much too indefinite to constitute the type of clear and convincing evidence that is necessary to sustain applicant's burden of proof. However, even if I were to accept Ms. Eiting's estimates, the most applicant

would have proven is that such stipends only constitute between 9%[8] and 10%[9] of its total operating budget.

These relatively incidental percentages would leave no less than 90% of applicant's operating budget devoted to other expenses that bear no apparent connection to dispensation of "charity." Consequently, the one possible act of "charity" that applicant could have performed during 2001 was paying the cost of rowing lessons for one boy.

Once again, however, applicant's operating budget fails to demonstrate what, if any, costs, applicant incurred by paying for these lessons. Absent this information, and in light of the foregoing, applicant has failed to prove that the primary thrust of its operations is directed toward serving the public interest. Accordingly, this case seems to fall within a line of decisions wherein exemptions were denied because the respective records either lacked evidence of any charitable disbursements or supported a conclusion that such expenditures were non-existent, incidental or *de minimus*. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286, 291 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914, 919 (5th Dist. 1991).

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8. A) $600.00 + $500.00 + 500.00 = $1,600.00;
   B) $1,600.00 + $17,154.89 (total expenses computed on operating budget) = 18,754.89;
   C) $1,600.00/18,754.89 = 0.0853 (rounded) or 9%.

9. A) $600.00 + $500.00 + 800.00 = $1,900.00;
   B) $1,900.00 + $17,154.89 = 19,054.89;
   D) $1,900.00/19,054.89 = 0.09971 (rounded) or 10%.

This is especially true where, as here, the record does not contain any evidence proving that applicant made any affirmative efforts, by advertising or otherwise, to advise the public of its willingness to waive fees. Instead, it contains Ms. Eiting's testimony, which specifically indicates that: (1) applicant does not waive fees unless and until someone advises that they are unable to pay; and, (2) applicant's governing board handles whatever fee waiver requests it does receive in a very "discreet" manner. Tr. pp. 55, 97-98.

At least three Illinois courts have denied property tax exemptions to organizations that did not advertise or make other affirmative efforts to advise the public at large that they were willing to waive fees or accommodate persons who manifested a legitimate inability to pay. Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272, 280-281, (2d Dist. 1987); Alivio Medical Center v. Department of Revenue, 299 Ill. App.3d 647, 652 (1st Dist. 1998); Riverside Medical Center v. Department of Revenue, 342 Ill. App.3d 603 (3rd Dist. 2003).

The "discreet" manner in which this applicant handles fee waiver requests is, in practical terms, substantially identical to the practices held inconsistent with dispensation of "charity" in the Highland Park Hospital, Alivio Medical Center and Riverside Medical Center cases. Accordingly, while Ms. Eiting testified that applicant granted fee waivers to six individuals during 2001 (Tr. p. 97), the mechanism by which applicant dispensed these waivers does not qualify as "charitable" within the meaning of Illinois law.

Based on the above, I conclude that applicant does not qualify as an "institution of public charity" because it operates primarily for the benefit of the relatively select group of persons who are either dues paying members or are able to afford the program fees that

it charges. Therefore, applicant's interest in the subject property does not qualify for exemption from real estate taxes for the period currently at issue under 35 **ILCS** 200/15-65(a) because it was not held by a duly qualified "institution of public charity."

2. LACK OF EXEMPT USE

It is well established that the word "exclusively," when used in Section 15-65 and other property tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Because the Association is primarily a membership organization, it stands to reason that applicant's primary use of the subject property was as a forum for conducting activities that furthered the common athletic interests of its dues paying membership throughout the period in question. Consequently, whatever "charitable" uses of that property applicant may have effectuated throughout that period were but incidental by-products of such non-exempt uses. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286, 291 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914, 919 (5th Dist. 1991). Therefore, applicant's interest in the subject property does not qualify for exemption from real estate taxes for the period currently at issue under 35 **ILCS** 200/15-65(a) because the leasehold wherein applicant conducted its activities was not "exclusively" or primarily used for purposes that qualify as "charitable."

3. LEASED OR OTHERWISE USED WITH A VIEW TO PROFIT

Whether real estate is "leased with a view to profit" depends in the first instance on the intent of the owner in using the property. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363, 371 (1944); Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 922 (1st Dist. 1988). Thus:

> … it is the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, "with a view to profit," the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose, the tax-exempt status of the property continues even though the use may involve an incidental production of income.

Children's Development Center, Inc. v. Olson, 52 Ill.2d 332, 336 (1972). *See also*, Victory Christian Church, *supra* at 922.

In order to apply this test, "one must look first to see if the owner of the real estate is entitled to exemption from property taxes." Victory Christian Church, *supra* at 922. If the owner is so exempt, then "one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed." *Id*.

There is no dispute that the owner–lessor of this subject property, the City, qualifies as a tax-exempt entity. *See* 35 **ILCS** 200/15-60. However, the preceding analysis clearly demonstrates that the leasehold interest in the subject property was neither held by a duly qualified institution of public "charity" nor "exclusively" used for purposes that qualify as "charitable." Therefore, applicant's non-exempt use of that leasehold destroys its tax exempt status.

4. FINAL CONSIDERATIONS AND SUMMARY

The holding in Decatur Sports Foundation v. Department of Revenue, 177 Ill. App.3d 696 (4th Dist., 1988), which applicant cites in support of its position, does not alter any of the preceding conclusions for several reasons. First, the Articles of Incorporation of the applicant in Decatur Sports Foundation recited, *verbatim*, that it was organized for the following purposes:

> To operate exclusively for charitable and educational purposes; to provide facilities for education, training and participation of all youths and adults residing in the City of Decatur, Illinois and Macon County, Illinois, in baseball, softball, soccer and other sports. To encourage and support the foregoing purposes of this corporation shall organize and promote tournaments and competition in baseball, softball, soccer and other sports at the local and national levels, including the sale of food and beverage, alcoholic and non-alcoholic, at such tournaments, provided the proceeds of such sales be used exclusively for the charitable and educational purposes aforesaid.

Decatur Sports Foundation, *supra* at 699.

Nothing in this language could lead one to conclude that the Foundation operated primarily for the benefit of any dues-paying membership it may have had. Here, however, applicant's mission statement contains several explicit passages which indicate that applicant operates primarily for the benefit of its dues-paying membership, which also provides no less than 52% of the total revenues shown on applicant's operating budget.

In contrast, the financial statements of the applicant in Decatur Sports Foundation revealed that a substantial portion of its revenue, $76,117.00, came from contributions. Decatur Sports Foundation, *supra* at 701. Much of my analysis concerning applicant's lack of charitable status was directed toward identifying evidentiary deficiencies that prevented me from accurately evaluating the role that contributions play in applicant's

overall financial structure. These same deficiencies prevent me from concluding that the Association's financial structure is comparable to that of the applicant in Decatur Sports Foundation. Therefore, applicant's reliance on this case is misplaced.

For the foregoing reasons, the Department's initial determination in this matter, denying the subject property exemption from 2001 real estate taxes under 35 **ILCS** 200/15-65(a) should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Rock Island County Parcel Index Number 32-13-100-015 and the attached legal description should not be exempt from 2001 real estate taxes.

Date: 12/1/2003

Alan I. Marcus
Administrative Law Judge